THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 12078 OF 2006

Dated: 1st May, 2007

Between:

Sri Balasiva Yogindra Maharaj Degree
College, Mydukur, represented by its Correspondent,
Sri Balasiva Yogindra Maharaj @ Thota Eswara
Varaprasad, Mydukur, Kadapa District and
another.

…Petitioners.

And

The Government of A.P., represented by its
Principal Secretary, Higher Education Department,
Secretariat Buildings, Saifabad, Hyderabad and others.

…Respondents.

ORAL ORDER:

This writ petition has been filed seeking issuance of a writ of certiorari calling for the records connected to G.O.Rt.No.502, dated 7.6.2006 issued by the first respondent and to quash the same by declaring it as illegal, contrary to law and violative of the Principles of Natural Justice.

The facts, in brief, as stated in the affidavit filed in support of the writ petition, are as follows:

The first petitioner is the college established during the academic year 1981-82 by Sri Balasiva Universal Peace Foundation, registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli and the second petitioner is the Managing Committee of the first petitioner-college. It is stated that a few members of the teaching staff at the instance of rival colleges at Mydukur and particularly the local M.L.A., who is also running a college at Mydukur, started disturbing the smooth functioning of the petitioner-college with and intention to close down the college in the town as it is gaining prominence in all respects. Pursuant to the directions of the 2nd respondent, some of the staff members were declared as surplus by the management and the same was reported to the Commissioner of Collegiate Education vide letter dated 25.7.2001. In view of declaration of some members as surplus, false allegations were made against the Correspondent by the staff and the second respondent instructed the Joint Director to sort out the differences existing between the correspondent and the staff members. Pursuant thereto, a meeting was held in the Chambers of Joint Driector wherein the Correspondent

and the members of ACTA were present and in the said meeting the following issues were raised for compliance:

1) Payment of salary to one B.V.Ramanaiah, Gardener from October, 1999 onwards.
2) Reinstatement of one Y.Veera Reddy, Junior Assistant
3) Payment of salaries of Narayana Reddy, Lecturer in Commerce and Smt. Lakshmi Devi, Scavenger.
4) Missing of Service registers.
5) Refresher course to the staff members
6) Maintenance of Joint account.
7) Regular payment of salaries
8) Appointment of Principal and
9) Payment of arrears of salary to Parvez Ahmed, Lecturer in Economics.

It is stated that the Correspondent of the college agreed to pay the salaries to Ramanaiah, Gardener from October 1999 to January, 2000 and accordingly paid them, agreed to reinstate Veerareddy, Junior Assistant including payment of arrears and complied with, maintained the missing registers, sent the staff members for refresher courses, opened the Joint Account and salaries were paid regularly and drew UGC Scales for all the staff members except Mr.Parvez Ahmed whose services were questionable. Sri Parvez Ahmed was not at all attending the college and further, he is maintaining a college of his own in the neghbouring town at Proddutur. Since he intended to draw salaries for the period he did not attend the college, the Correspondent stopped claiming his slaries and the same was informed by the Correspondent through letter dated 11.9.2001.

It is stated that in spite of compliance of the issues raised in the meeting, some of the staff members went on illegal relay hunger strike just to put the college in discomfort and create bad image to it. The

same was taken note by the District Collector and he directed the Revenue Divisional Officer, Jammalamadugu to enquire into the charter of demands put in by the Joint Action Committee and its compliance and submit a report. The Enquiry officer, after detailed enquiry submitted his report dated 29.3.2002 stating that all the demands were complied with except payment of arrears to Parvez Ahmed, which was not done since his services are questionable and a case is pending before the High Court. The Enquiry Officer, in his report, categorically held that the limited staff who are under strike are already notified as surplus and that they want to remove the management and get the Special Officer appointed and later on to see that the petitioner-college is absorbed into government sector. It was also stated that all the staff members were paid salaries regularly and they have no grievances at all and without proper notice to the management, one Lecturer, by name, M.V.Rammohan Reddy resorted to do strike by alleging falsehood against the Correspondent and that the present management need not be disturbed based on the unwanted relay hunger strike and there is no need for appointment of Special Officer and the strike is unwarranted and motivated.

It is further stated that Sri M.V.Ram Mohan Reddy and others, with an ill motive, reported to 2nd respondent alleging that the points agreed were not complied with. Basing on the said representation, which was made at the instance of local M.L.A., the second respondent issued show cause notice dated 28.12.2004 directing the Correspondent of the College to show cause why the management should not be suspended and Special Officer be not appointed. In the show cause notice it was stated that the Correspondent of the College has disobeyed the orders of the Director of Collegiate Education and Regional Joint Director, Kadapa and further stated as under:

1) the agreement dated 10.7.2001 in toto has not been implemented by the Correspondent and it resulted in a relay hunger strike by the staff.

2) 3 teaching staff of the college was surrendered irregularly by the Correspondent and the Director directed to continue.

3) The salaries of 4 surrendered lecturers are credited in Rayalaseema Grameena Bank instead of a Nationalised Bank.

4) Correspondent did not draw and disburse UGC arrears of Rs. 1,05,000/- sanctioned to A.R.Parvez Ahmed and allowed them to lapse.

5) Correspondent suspended 17 staff members irregularly and the order of R.J.D. to reinstate was not implemented but approached High Court by filing W.P.No.15116 of 2002..

6) Government issued orders appointing D.C.E. to enquire into the allegations, but the Correspondent challenged the same in W.P.No. 15723 of 2002 and obtained orders.

7) One V.Prasad Babu and 21 staff members filed W.P.No.23197 of 2003 for payment of salaries but he claimed salaries of only those persons who have not filed W.P.

8) Correspondent appointed one advocate as Enquiry Officer, in respect of 17 suspended staff members. One of the staff members challenged it in W.P.No.9721 of 2002 and thereafter retired Principal was appointed and basing on report reinstated them. Even after reinstatement W.P.No. 15116 of 2002 has not been withdrawn.

9) Correspondent has not provided minimum infrastructural facilities in the college.

10) Correspondent is responsible for not sending proposals for release of budget of UGC arrears payable to some staff members.
11) There is backlog of audit of accounts of 3 colleges of the society.
12) Pay fixations under R.P.S. 1996 (UGC) in respect of some staff members have not been done due to non-submission of proposals by the Correspondent.

It is stated that the Correspondent submitted detailed explanation explaining each and every allegation as untrue. Thereafter, after a lapse of 11 months, 2nd respondent issued proceedings dated 8.11.2005 intimating that the explanation is neither convincing nor conducive and held the charges as proved. By so stating, the 2nd respondent exercising his powers under Section 24(3)(a) of A.P. Education Act, suspended the management of the college and appointed the 3rd respondent as Special Officer to look after the affairs of the college and assailing the said order of the second respondent, the petitioners filed a statutory appeal on 16.11.2005. While things stood thus, the 3rd respondent assumed charge on 17.11.2005. When no interim orders were passed in the statutory appeal, the petitioners filed Writ petition No. 26225 of 2005 assailing the order dated 8.11.2005, wherein interim orders were passed directing the first respondent to pass appropriate orders on the interim application and till such time, the Special Officer shall not take any policy decision nor shall incur any expenditure exceeding Rs.500/- each time for each item. It is stated that this court finding that some of the allegations stated in the notice and order, prima facie amount to contempt of court, issued suo motu contempt notice to the 2nd respondent and the said

Contempt Case is pending. Meanwhile, the first respondent passed orders in G.O.Rt.No.11 dated 5.1.2001 rejecting the interlocutory petition and thereafter final orders were passed in G.O.Rt.No.502 dated 7.6.2006 rejecting the appeal. Assailing the said order, this writ petition has been filed.

Counter affidavit has been filed by the respondents 1 and 2 stating thus:

It is stated that the statement of the petitioner that a few members of the teaching staff at the instance of rival colleges at Mydukur and particularly the local MLA started disturbing the smooth functioning of the college is misconceived. So far, no complaint was received from the petitioner and the fact that the college is receiving the aid since 1990 without any interruption itself shows that there is no intention of closing down the college. The petitioners' mismanagement led to giving of complaints against them. Moreover, the local MLA, the Correspondents of the local colleges concerned are not made as respondents in the W.P.

It is stated that the staff of the petitioner-college represented to the 2nd respondent stating that they are being harassed by the petitioners by not giving the benefits of the grant-in-aid posts which they are holdings. The salaries are not being paid properly and they were made to work even for unaided sections though they were appointed to aided sections. Various grievance were expressed by the staff and in order to avoid inconvenience and hardship to the teaching and non-teaching staff of the petitioner-college and to solve their pending problems, a meeting was arranged in the chambers of Dr.S.T.Surender Rao, Joint Director-II in the Office of the Director of Collegiate Education on 10-7-2001 but not in the office of the Director of Collegiate Education. The members of the Staff Association of the

College, ACTA, the President and Correspondent and the Regional Joint Director of Collegiate Education, Kadapa had attended the meeting and a consensus was reached on 10.7.2001 and the management agreed to resolve all the problems by paying the salaries to all the concerned, revoke suspension of Y.Veera Reddy, assured that the management would not strike off entries in the service registers etc and the same was reduced to writing as an agreement/undertaking which was signed by all the participants in the meeting. Hence the contention of the petitioners that the staff has made false allegations against them as they had passed orders surrendering the staff is not correct. The meeting was commenced on the basis of representation of the staff much prior to 25.7.2001 i.e. on 10.7.2001 and not on or after 25.7.2001. It is evident from the signature of the Correspondent of the college that all the allegations raised by the staff members were proved and as per the discussion, the Correspondent agreed to rectify the irregularities committed by the management and also signed the minutes of the meeting on 10.7.2001. The petitioner is jumbling the dates to confuse the court by misrepresenting that the staff have made false allegations against him as he had declared them as surplus through his letter dated 25.7.2001. The President and Correspondent of the College was directed to implement the agreement without any delay and submit compliance report, by proceedings of the Commissioner dated 20.8.2001. But, even after lapse of 6 months, the Correspondent neither implemented the agreed demands nor submitted a compliance report to the Commissioner of Collegiate Education. The statement of the petitioner that he has paid the salary of Ramanaiah, Gardener from October, 1999 to January – 2000 as agreed upon itself go to show that the petitioner is not paying the salaries of the employees regularly. In the counter the version of the petitioner that the agreement was

complied with is denied. It is stated that in fact, aggrieved by non-settlement of their legitimate pending problems by the President and Correspondent of the College, the Joint Action Committee with 17 staff of the college resorted to relay hunger strike in front of the District Collectorate, Kadapa during the period from 26-3-2002 to 11-04-2002 to focus the attention of the authorities. Thereupon, the District Collector, Kadapa directed the Revenue Divisional Officer, Jammalamadugu to inquire into the charter of demands put-forth by the Joint Action Committee, who after enquiry opined that the present management need not be disturbed just based on this fake unwarranted relay hunger strike and appointment of Special Officer is not necessary at all. The report further stated that the services of the surplus staff who are doing relay hunger strike are not necessary to the management. It is stated that the said finding is biased and it is the duty of the collegiate education to decide whether the staff are sufficient or not as per the workload norms. As such the report cannot be taken into consideration. The contention of the petitioner that there was a move to suspend the management of the College is not correct though mismanagement was proved during 2001 in view of the agreement dated 10.7.2001. The District Collector or the Revenue Divisional Officer do not have any role to play in the administration, appointment or functioning of the Colleges, though they are established in a District. The competent authority to deal with the aspects pertaining to the Administration of the College, appointment of staff of an aided College is the Director of Collegiate Education and not the District Collector. Hence the enquiry, that too, made unilaterally is bad in law and is not binding on the authorities. The staff resorted to strike during 26-3-2002 to 11.4.2002 and not in 2001 and the strike was resorted to as the petitioners have not implemented the agreement/undertaking which was reduced to writing on 10.7.2001

and after waiting for six months, an enquiry officer was appointed to ascertain whether the undertaking is complied with or not. The petitioners started harassing Sri A.R.Parvez Ahmed and the appointment of an Advocate as enquiry officer is barred by disciplinary rules, which led to filing of Writ Petition No. 9721 of 2002 by the said Parvez Ahmed and this Court basing on the rules declared the appointment of advocate as enquiry officer as illegal and directed the petitioner to appoint an enquiry officer as contemplated under Rule 7 of the A.P.Private Institutions Employees (Disciplinary Control) Rules, 1983. The proceedings issued for reinstatement of the suspended staff on the ground that they went on strike, by the Joint Director of Collegiate Education were questioned by the petitioner in Writ Petition No.15116/2002 wherein the impugned orders were suspended, but the petitioner during the pendency of the said writ petition, reinstated the staff and after reinstatement 4 lecturers were surrendered by the petitioner to the 2nd respondent on the ground that they became surplus without any orders from the respondent No.2, who is competent to decide as to whether any staff is surplus or not. The petitioner has not put forth the correct facts before the Honourable Court.

It is stated that in view of the continued harassment and based on the findings of the enquiry officer and the record of cases, the second respondent was constrained to issue proceedings dated 28.12.2004 under Section 24(3)(a) of A.P. Education Act to show cause as to why the competent authority should not suspend the management of petitioner-college for mismanagement, misappropriation etc. Aggrieved by the said show cause notice, the petitioner filed W.P.No.165/2005 in this court, which was disposed of by this court. Pursuant to the orders of the Court, the President and

Correspondent submitted their explanation and the 2nd respondent, on consideration of the explanation, the alleged irregularities against the petitioner, report of the enquiry officer and the material available on record, suspended the management vide proceedings dated 8.11.2005 and appointed Sri Ramachandra Reddy, R.D.O., Jammalamadugu as the Special Officer of the College under Section 24(3)(a) of the A.P. Education Act, 1982. The counter narrated as to the cases filed in respect of the surplus staff, disbursement of the salaries without extracting work and crediting of the salaries of the staff in the individual Savings Bank Accounts of the staff in the nationalized banks and arrears payable to Sri A.R.Parvez to say that the version of the Correspondent is not correct.

It is stated that the contention of the petitioners that the 2nd respondent has no jurisdiction to suspend the management is not correct. The 2nd respondent is the competent authority to see whether there is any mismanagement of the affairs of the college, to see whether there is any misappropriation of the funds, and, to appoint special officer under Section 24(3)(a) of A.P. Education Act. The second respondent after coming to a conclusion that the management is responsible for the irregularities committed has ordered appointment of Special Officer.

It is stated that the petitioners have not provided minimum infrastructural facilities in the college, which has resulted in dislocation of academic work in the college. The explanation submitted by the petitioners was considered and as it was found that the same was not convincing and conducive, the charges were held proved and it was felt that continuation of President and Correspondent was not in the interest of the college. The Special Officer assumed charge in the college on 17.11.2005 and the college is now functioning on sound

lines. Aggrieved thereby, the petitioner filed statutory appeal and the appeal was rejected by the Government. There is no complaint against the Special Officer regarding the day-to-day affairs of the college. There is no fall in strength of the students in the college. The contention that the alleged fall in strength of students has resulted in losing several aided posts in rationalization scheme is not correct. The allegation that the special officer has orally instructed the principal not to admit any students in this academic year and not to give any notification for admission of students is not correct. Any notification of admission either in newspaper or in any media will cost more than Rs.500 and in view of the interim direction in W.P.No.26225 of 2005, dated 9.12.2005, the Revenue Divisional officer is not empowered to spend more than Rs.500/-. The writ petition is devoid of merits and is liable to be dismissed.

Heard Shri P.Gangaiah Naidu, learned Senior Counsel appearing for the petitioners and the learned Government Pleader for respondents.

It is submitted by the learned counsel for the petitioners that the allegations made against the Correspondent are trivial and routine in nature and are prevalent in any institution and do not warrant suspension of the management itself. Moreover, the allegations are made by some of the staff members at the instance of local M.L.A. who is having a college at the same place and Correspondents of other colleges in order to see that the college is closed down. All the demands made by the staff and contained in the agreement are complied with. Further, on the relay hunger strike being observed by certain staff and on their representation, the District Collector ordered the enquiry to be conducted by the Revenue Divisional Officer, who after conducting the enquiry and after dealing with the contents of the Charter of Demands put in by the Joint Action Committee demand-

wise, reported that the present Management need not be disturbed just based on the fake/unwanted Relay Hunger Strike and appointment of Special Officer is not necessary at all and the striking staff may be directed to join duties with immediate effect as the examinations are nearing. The services of the surplus staff who are doing relay hunger strike are not necessary to the management. He submitted that management of the college was not attributed with any allegation and hence the suspension of management does not arise. Detailed explanation was submitted to the show-cause notice issued by the second respondent and the allegations mentioned in the order dated 8.11.2005 are all invented and amount to contempt of court. The first respondent also did not apply its mind while issuing the impugned order. In any event, all the allegations are levelled only against the Correspondent and not against the management and they are in the regular course of working. If at all any action is to be taken, it can be only against the Correspondent and in no case, the management itself can be suspended. Therefore, the order impugned is illegal and contrary to law and is passed without considering the submissions of the petitioners and without application of mind, and, therefore, the same is liable to be set aside.

On the other hand, it is submitted by the learned counsel for the respondents that no complaint has been made by the petitioners with regard to disturbing of the college by the local M.L.A. who is running a college and the college is receiving the aid from 1990 which itself shows that there is no intention to close down the college. It is only on representation of the staff of the college that they are being harassed by the petitioners by not giving the benefits of the Grant-in-aid and they are made to work even in unadided sections and on their expressing other grievances like non-payment of salary to Sri B.V.Ramanaiah, a meeting was arranged in the chambers of the Joint Director, wherein

an agreement was entered into, but, the said agreement was not complied by the petitioners. Therefore, in view of the continued harassment by the petitioner and non-compliance of the agreement, the second respondent was constrained to issue show cause notice dated 28.12.2004 and as the explanation submitted was not found to be satisfactory, the second respondent suspended the management of the petitioner college by order dated 8.11.2005, as the charges proved against the petitioners amount to irregularities within the meaning of Section 24(3)(a) of the A.P.Education Act and even the appeal filed against the said order was rightly rejected. So contending, the learned Government Pleader sought for dismissal of the writ petition.

Initially, when certain staff of the petitioner's college represented to the 2nd respondent that they are being harassed by the petitioners by not giving the benefits of the grant-in-aid and were made to work even for unaided section and expressed other grievances, a meeting was arranged in the chambers of the Joint Director of Collegiate Education on 10.7.2001 wherein the members of the Staff Association of the College, ACTA, the President and Correspondent and the Regional Joint Director of Collegiate Education, Kadapa had attended and a consensus was reached and the management agreed to resolve all the problems by paying the salaries/arrears of salaries to all the concerned staff, revoked suspension of Sri Y.Yeera Reddy and the same was reduced to writing as an agreement and was signed by all the participants. The said agreement was stated to have been complied with by the petitioners. But, even after the said agreement, when some of the staff members went on relay hunger strike, the District Collector ordered enquiry to be conducted by the Revenue Divisional Officer, who after conducting enquiry even as to the implementation of the contents of the agreement arrived at on

10.7.2001 held, after dealing with each and every demand in the said agreement that all the demands of the agreement have been fulfilled by the petitioners. Ultimately, the Revenue Divisional Officer gave a report stating that the management need not be disturbed just based on the fake/unwanted relay hunger strike and appointment of Special Officer is not at all necessary. Thereafter, show cause notice came to be issued by the second respondent on 28.12.2004 to the Correspondent of the petitioner-college framing certain charges and calling upon him to show cause as to why the management should not be suspended and special officer appointed to run the college on proper lines. To the said show-cause notice, the Correspondent submitted his explanation as against each and every charge. Nearly after 11 months of the submission of the explanation by the Correspondent, the Director had passed order dated 8.11.2005 suspending the management of S.B.S.Y.M.Degree College, Mydukur and appointing Sri Ramachandra Reddy, Revenue Divisional Officer, Jammalamadugu, Kadapa as Special Officer to S.B.S.Y.M. Degree College, Mydukur to look after the affairs of the S.B.S.Y.M.Degree College, Mydukur. As against the said order, the petitioners filed statutory appeal before the Government and the Government dismissed the appeal by issuance of G.O.Rt.No.502, dated 7.6.2006.

It is to be noted that on relay hunger strike observed by certain staff of the petitioner-college, the District Collector appointed the Revenue Divisional Officer to conduct enquiry and submit report. The Revenue Divisional Officer after conducting the enquiry as to several demands raised by the striking employees including the demand as to the compliance of the agreement entered into held that all the demands forming part of the agreement were complied with by the Correspondent and reported that there is no need for disturbing the management. Again in 2004, the Director of Collegiate Education

issued show cause notice to the Correspondent framing charges including the one as to compliance of the conditions of agreement. The Correspondent of the petitioner-college submitted explanation to each and every charge. But, the second respondent by holding that the explanations to the charges are not convincing and conducive suspended the management of the petitioner-college and on appeal to the Government, the appeal was also rejected by the Government.

Therefore, it is pertinent here to consider the relevant provision empowering the authority to suspend the management. What Section 24(3)(a) of A.P. Education Act prescribes is that where the competent authority is satisfied that the management is responsible for the lapses or irregularities of the institution, the competent authority may, after giving to such management an opportunity to make representation and for reasons to be recorded in writing, suspend the management and appoint a Special Officer till the reconstitution of the management. In the instant case, as seen from the charges framed by the Director, they can in no way be termed as constituting lapses or irregularities for which the management is responsible, warranting invocation of power under Section 24(3)(a) of the A.P. Education Act. All the allegations are levelled only against the Correspondent and they in no way are connected to the very management of the institution, and, even in the enquiry conducted prior to the issuance of show cause notice it was reported that there was no need to disturb the present management and even the appeal against the same was rejected. But, the Director has taken a different view and suspended the management. In my view, both the 2nd and 1st respondents have not considered the explanations submitted by the petitioners in proper perspective, and having regard to the allegations made by the staff, at the most, it is a case to proceed against the Correspondent, but not against the

management itself leading to its suspension.

In that view of the matter, the impugned order is set aside and the writ petition is allowed and the order passed by the Government in G.O.Rt.No.502 dated 7.6.2006 as also the order passed by the Director of Collegiate Education, dated 8.11.2005 are set aside and there shall be a direction to the respondents to restore the management of College to the petitioners, within a period of four weeks from the date of the receipt of a copy of this order.

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1-5-2007

R.SUBHASH REDDY, J.

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